

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 52

HOUSE BILL 2208

AN ACT

AMENDING SECTIONS 13-2921.01 AND 13-3601, ARIZONA REVISED STATUTES; RELATING TO DOMESTIC VIOLENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-2921.01, Arizona Revised Statutes, is amended to read:

13-2921.01. Aggravated harassment; classification; definition

A. A person commits aggravated harassment if the person commits harassment as provided in section 13-2921 and any of the following applies:

1. A court has issued an order of protection or an injunction against harassment against the person and in favor of the victim of harassment and the order or injunction has been served and is still valid.

2. The person has previously been convicted of an offense included in section 13-3601.

B. The victim of any previous offense shall be the same as in the present offense.

C. A person who violates subsection A, paragraph 1 of this section is guilty of a class 6 felony. A person who commits a second or subsequent violation of subsection A, paragraph 1 of this section is guilty of a class 5 felony. A person who violates subsection A, paragraph 2 of this section is guilty of a class 5 felony.

D. For the purposes of this section, "convicted" means a person who was convicted of an offense included in section 13-3601, ~~who had judgment deferred pursuant to section 13-3601, subsection M~~ or who was adjudicated delinquent for conduct that would constitute a historical prior felony conviction if the juvenile had been tried as an adult for an offense included in section 13-3601.

Sec. 2. Section 13-3601, Arizona Revised Statutes, is amended to read:

13-3601. Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice; report

A. "Domestic violence" means any act which is a dangerous crime against children as defined in section 13-604.01 or an offense defined in section 13-1201 through 13-1204, 13-1302 through 13-1304, 13-1502 through 13-1504 or 13-1602, section 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2916 or section 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.

2. The victim and the defendant have a child in common.

3. The victim or the defendant is pregnant by the other party.

4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.

1 5. The victim is a child who resides or has resided in the same
2 household as the defendant and is related by blood to a former spouse of the
3 defendant or to a person who resides or who has resided in the same household
4 as the defendant.

5 B. A peace officer may, with or without a warrant, arrest a person if
6 the officer has probable cause to believe that domestic violence has been
7 committed and the officer has probable cause to believe that the person to
8 be arrested has committed the offense, whether such offense is a felony or
9 a misdemeanor and whether such offense was committed within or without the
10 presence of the peace officer. In cases of domestic violence involving the
11 infliction of physical injury or involving the discharge, use or threatening
12 exhibition of a deadly weapon or dangerous instrument, the peace officer
13 shall arrest a person, with or without a warrant, if the officer has probable
14 cause to believe that the offense has been committed and the officer has
15 probable cause to believe that the person to be arrested has committed the
16 offense, whether such offense was committed within or without the presence
17 of the peace officer, unless the officer has reasonable grounds to believe
18 that the circumstances at the time are such that the victim will be protected
19 from further injury. Failure to make an arrest does not give rise to civil
20 liability except pursuant to section 12-820.02. In order to arrest both
21 parties, the peace officer shall have probable cause to believe that both
22 parties independently have committed an act of domestic violence. An act of
23 self-defense that is justified under chapter 4 of this title is not deemed
24 to be an act of domestic violence. The release procedures available under
25 section 13-3883, subsection A, paragraph 4 and section 13-3903 are not
26 applicable to arrests made pursuant to this subsection.

27 C. A peace officer may question the persons who are present to
28 determine if a firearm is present on the premises. On learning or observing
29 that a firearm is present on the premises, the peace officer may temporarily
30 seize the firearm if the firearm is in plain view or was found pursuant to
31 a consent to search and if the officer reasonably believes that the firearm
32 would expose the victim or another person in the household to a risk of
33 serious bodily injury or death. A firearm THAT IS owned or possessed by the
34 victim shall not be seized unless there is probable cause to believe that
35 both parties independently have committed an act of domestic violence.

36 D. If a firearm is seized pursuant to subsection C of this section,
37 the peace officer shall give the owner or possessor of the firearm a receipt
38 for each seized firearm. The receipt shall indicate the identification or
39 serial number or other identifying characteristic of each seized
40 firearm. Each seized firearm shall be held for at least seventy-two hours
41 by the law enforcement agency that seized the firearm.

42 E. If a firearm is seized pursuant to subsection C of this section,
43 the victim shall be notified by a peace officer before the firearm is
44 released from temporary custody.

1 F. If there is reasonable cause to believe that returning a firearm
2 to the owner or possessor may endanger the victim, the person who reported
3 the assault or threat or another person in the household, the prosecutor
4 shall file a notice of intent to retain the firearm in the appropriate
5 superior, justice or municipal court. The prosecutor shall serve notice on
6 the owner or possessor of the firearm by certified mail. The notice shall
7 state that the firearm will be retained for not more than six months
8 following the date of seizure. On receipt of the notice, the owner or
9 possessor may request a hearing for the return of the firearm, to dispute the
10 grounds for seizure or to request an earlier return date. The court shall
11 hold the hearing within ten days after receiving the owner's or possessor's
12 request for a hearing. At the hearing, unless the court determines that the
13 return of the firearm may endanger the victim, the person who reported the
14 assault or threat or another person in the household, the court shall order
15 the return of the firearm to the owner or possessor.

16 G. A peace officer is not liable for any act or omission in the good
17 faith exercise of the officer's duties under subsections C, D, E and F of
18 this section.

19 H. Each indictment, information, complaint, summons or warrant that
20 is issued and that involves domestic violence shall state that the offense
21 involved domestic violence and shall be designated by the letters DV. A
22 domestic violence charge shall not be dismissed or a domestic violence
23 conviction shall not be set aside for failure to comply with this subsection.

24 I. A person WHO IS arrested pursuant to subsection B of this section
25 may be released from custody in accordance with the Arizona rules of criminal
26 procedure or any other applicable statute. Any order for release, with or
27 without an appearance bond, shall include pretrial release conditions THAT
28 ARE necessary to provide for the protection of the alleged victim and other
29 specifically designated persons and may provide for additional conditions
30 which THAT the court deems appropriate, including participation in any
31 counseling programs available to the defendant.

32 J. When a peace officer responds to a call alleging that domestic
33 violence has been or may be committed, the officer shall inform in writing
34 any alleged or potential victim of the procedures and resources available for
35 the protection of such victim including:

36 1. An order of protection pursuant to section 13-3602, an injunction
37 pursuant to section 25-315 and an injunction against harassment pursuant to
38 section 12-1809.

39 2. The emergency telephone number for the local police agency.

40 3. Telephone numbers for emergency services in the local community.

41 K. A peace officer is not civilly liable for noncompliance with
42 subsection J of this section.

43 L. An offense THAT IS included in domestic violence carries the
44 classification prescribed in the section of this title in which the offense
45 is classified. If the defendant committed a felony offense listed in

1 subsection A of this section against a pregnant victim and knew that the
2 victim was pregnant or if the defendant committed a felony offense causing
3 physical injury to a pregnant victim and knew that the victim was pregnant,
4 the maximum sentence otherwise authorized shall be increased by up to two
5 years.

6 ~~M. If the defendant is found guilty of an offense included in~~
7 ~~domestic violence and if probation is otherwise available for that offense,~~
8 ~~the court may, without entering a judgment of guilt and with the consent of~~
9 ~~the defendant, defer further proceedings and place the defendant on probation~~
10 ~~or intensive probation, as provided in this subsection. The terms and~~
11 ~~conditions of probation or intensive probation shall include those necessary~~
12 ~~to provide for the protection of the alleged victim and other specifically~~
13 ~~designated persons and additional conditions and requirements which the court~~
14 ~~deems appropriate, including imposition of a fine, incarceration of the~~
15 ~~defendant in a county jail, payment of restitution, completion of a domestic~~
16 ~~violence offender treatment program that is provided by a facility approved~~
17 ~~by the department of health services or a probation department or any other~~
18 ~~counseling or diversionary programs that do not involve domestic violence and~~
19 ~~that are available to the defendant. On violation of a term or condition of~~
20 ~~probation or intensive probation, the court may enter an adjudication of~~
21 ~~guilt and proceed as otherwise provided for revocation of probation. On~~
22 ~~fulfillment of the terms and conditions of probation or intensive probation,~~
23 ~~the court shall discharge the defendant and dismiss the proceedings against~~
24 ~~the defendant. This subsection does not apply in any case in which the~~
25 ~~defendant has previously been found guilty under this section, or in which~~
26 ~~charges under this section have previously been dismissed in accordance with~~
27 ~~this subsection.~~

28 ~~N. If a defendant is diverted pursuant to this section, the court~~
29 ~~shall provide the following written notice to the defendant:~~

30 ~~You have been diverted from prosecution for an offense~~
31 ~~included in domestic violence. You are now on notice that:~~

32 ~~1. If you successfully complete the terms and conditions~~
33 ~~of diversion, the court will discharge you and dismiss the~~
34 ~~proceedings against you.~~

35 ~~2. If you fail to successfully complete the terms and~~
36 ~~conditions of diversion, the court may enter an adjudication of~~
37 ~~guilt and proceed as provided by law.~~

38 ~~O. M. If the defendant is found guilty of a first offense included~~
39 ~~in domestic violence, the court shall provide the following written notice~~
40 ~~to the defendant:~~

41 ~~You have been convicted of an offense included in domestic~~
42 ~~violence. You are now on notice that:~~

43 ~~1. If you are convicted of a second offense included in~~
44 ~~domestic violence, you may be placed on supervised probation and~~
45 ~~may be incarcerated as a condition of probation.~~

1 2. A third or subsequent charge may be filed as a felony
2 and a conviction for that offense shall result in a term of
3 incarceration.

4 P. N. The failure or inability of the court to provide the notice
5 required under ~~subsections N and O~~ SUBSECTION M of this section does not
6 preclude the use of the prior convictions for any purpose otherwise
7 permitted.

APPROVED BY THE GOVERNOR APRIL 7, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 7, 2004.

Passed the House February 24, 2004

Passed the Senate March 31, 2004

by the following vote: 52 Ayes,

by the following vote: 29 Ayes,

4 Nays, 4 Not Voting

0 Nays, 1 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Klu Blumett
President of the Senate

Charmain Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1st day of April, 2004

at 1:40 o'clock P. M.

Jennifer Ibarra
Secretary to the Governor

Approved this 7 day of

April, 2004

at 10³⁵ o'clock A. M.

J. N. ...
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of April, 2004

at 12:18 o'clock P. M.

Janice K. Brewer
Secretary of State

H.B. 2208